NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN DOE, et al.,	Civil No.: 09-3409 (JLL)
Plaintiffs,	
v.	
SIZEWISE RENTALS, LLC, et al.,	**ORDER**
Defendants.	

This matter comes before the Court by way of Plaintiffs' motion to strike Defendants' motion to dismiss [Docket Entry No. 77] and it appearing that:
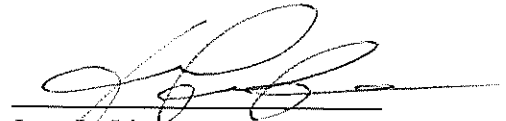
1. Plaintiffs were granted leave to file a Second Amended Complaint on August 3, 2010.

2. The Second Amended Complaint was filed on the Court's docket on August 10, 2010.

3. On August 11, 2010, certain defendants filed a motion to dismiss the Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

4. The deadline for opposing defendant's motion to dismiss was August 23, 2010 and the return date was set for September 7, 2010.

5. Plaintiffs did <u>not</u> oppose defendant's motion to dismiss.

6. On September 7, 2010, this Court entered an order granting defendant's motion to dismiss for failure to state a claim, dismissing the Second Amended Complaint without prejudice and granting Plaintiffs leave to file a Third Amended Complaint.

7. On the same day, Plaintiffs filed the instant motion to strike defendant's motion to dismiss. Plaintiffs base their motion to strike on the fact that discovery remains open and that genuine issues of fact remain in dispute.

8. The fact that discovery remains open has no bearing on whether Plaintiffs' Second Amended Complaint adequately states a claim upon which relief may be granted.

9.   Plaintiffs could have, but chose not to, oppose defendant's motion to dismiss on the merits.

10.   In any event, given that Plaintiffs have been afforded a *third* opportunity to amend their complaint,   Plaintiffs have not been prejudiced by the Court's decision on defendant's motion to dismiss on the merits.

Accordingly, **IT IS** on this **14ᵗʰ day of September, 2010**,

ORDERED that Plaintiff's motion to strike [Docket Entry No. 77] is **denied.**

IT IS SO ORDERED.

Jose L. Linares
United States District Judge